



## Planning Act 2008 – section 91

**EN010095**

### **Application by Alternative Use Boston Projects Limited for an Order Granting Development Consent for the Boston Alternative Energy Facility project**

#### **Agenda for Issue Specific Hearing 2: Environmental Matters**

##### **Part 1:**

**Date:** Wednesday 24 November 2021  
**Time:** 10.00am (Arrangements Conference at 09.30am)  
**Venue:** Virtual Hearing via Microsoft Teams

##### **Part 2 (if required):**

**Date:** Thursday 25 November 2021  
**Time:** 10.00am (Arrangements Conference at 9.30am)  
**Venue:** Virtual Hearing via Microsoft Teams

#### **Introduction**

Details on participation, conduct and management of the hearing are included in **Annex A** of this agenda and should be read by all participants in advance of the hearing.

If for any reason, including technical issues, matters are not concluded by the end of this hearing, there are dates reserved for additional hearings during the week of the 28 February 2022. This will only be needed if the Examining Authority (ExA) decides that it is necessary to hear further oral submissions from any party on any relevant matters.

The hearing, and any subsequent hearings, will be held without prejudice to the ExA's consideration of the broader merits of the application.

The details set out below are indicative and the ExA may find it necessary to include additional agenda items or to amend the order in which the items are dealt with.

#### **Requested Attendees**

The ExA would find it helpful if the following parties could attend this hearing:

- The Applicant
- Environment Agency
- Lincolnshire Wildlife Trust
- Marine Management Organisation
- Natural England
- Royal Society for the Protection of Birds

Those Interested Parties (IPs) listed above are those from whom the ExA would particularly like to hear from on this topic. By way of clarification, IPs who are not included in that list, but who have specifically requested to speak at this Issue Specific Hearing (ISH) will also be sent a joining link.

## **Agenda Items**

### **1. Welcome, introductions and arrangements for the hearing**

Questions will focus on the areas in which findings about effects are not agreed between the main parties. Relevant participants will be invited to comment on the statements made. Initial questions relate to responses provided to the ExA's First Written Questions (ExQ1); ExQ1 numbers are provided in square brackets [ ] for reference purposes.

This agenda then goes on to consider further questions arising from Deadline 1 (D1) and Deadline 2 (D2) submissions.

### **2. The overarching Environmental Statement (ES)**

a. [3.0.5]. To the Applicant: It is noted that scour protection may or may not be required and that there would be habitat loss in the event that it was needed. Have the assessments and habitat loss calculations assumed a worst-case scenario of scour protection being required?

Please could Natural England (NE) set out any outstanding concerns about potential effects of scouring.

b. [3.0.6]. Please can the Applicant confirm the number of annual vessel movements per year, in relation to the vessels required to deliver the Refuse Derived Fuel (RDF) and export the aggregate, and provide an estimate of the annual number of additional pilot cutter movements above the current annual number. How have the additional pilot cutter movements been factored in in the assessments in the ES and Habitats Regulations Assessment (HRA)?

c. [3.0.9] Environmental Permit (EP) – Please can the Environment Agency (EA) set out its specific concerns in relation to the EP process and respond to the Applicant's response to the comments made about the EP in its Relevant Representation (RR).

Surface water - Please can the Applicant provide an update in respect of the potential need for an EP for discharge to surface water from excavations during construction.

Flood risk - Please can the Applicant and EA provide an update in respect of the progress of the legal agreement with the EA and the protective provisions to enable the disapplication of the requirement to obtain an EP for a flood risk activity.

d. [3.0.13]. Environment Agency (EA) [RR-013] Item No 12: Project description - Can the EA confirm that management of the operational waste generated by the Proposed Development would be controlled through the EP?

e. [3.0.18]. Surface water - Please can the Applicant provide an update in respect of the potential need for an EP for discharge to surface water from excavations during construction.

Water Framework Directive (WFD)/ Marine ecology – Does the information set out in the Outline Surface Water Drainage Strategy submitted at D1, including the measures proposed to prevent contamination resulting from discharges from the permanent site drainage system, address the EA's concerns in relation to impacts on marine and transitional waterbodies and saltmarsh?

### **3. Air Quality**

a. [2.0.5]. Can the Applicant explain if there are any mitigation measures which may be used to reduce impacts on Receptor 37?

b. [2.0.7 & 2.0.8]. Can NE outline measures which the Applicant could undertake to reduce risk of adverse effects from deposition on saltmarsh habitats?

### **4. Biodiversity, Ecology and Natural Environment (including HRA)**

a. [3.1.4]. Please can the Royal Society for the Protection of Birds (RSPB) state to what extent the addendums to Chapter 17 of the ES and the HRA included in the Applicant's D1 submissions and the D2 updated Outline Landscape and Ecological Mitigation Strategy (OLEMS) and 'Without Prejudice' Habitats Directive Derogation Case address its concerns, and identify unresolved areas of concern.

b. [3.1.5]. Please can NE state whether they consider on the basis of the Applicant's submissions, including the additional bird survey data, to D1 and D2 that the 250m buffer zone for ruff and redshank is appropriate.

c. [3.1.7]. Following the submission of the ES/ HRA addendums at D1, containing additional information on cumulative/in combination effects do NE, the Marine Management Organisation (MMO) or any

other IPs have any outstanding concerns about the scope of the cumulative/ in combination assessments?

d. [3.1.10]. Please can NE confirm whether it is satisfied that the Applicant has identified all of the relevant European sites and features in the HRA?

e. [3.1.11]. Please can the Applicant indicate when it is anticipated that the Marine Mammal Addendum will be updated in respect of risk to seals from vessels in anchorage area and provided to the Examination.

f. [3.1.13]. Please can NE and other IPs confirm if they are satisfied that the ES/ HRA addendums provided by the Applicant at D1 provide sufficient information on the potential impacts of the Proposed Development on the conservation objectives of the European sites and the condition of their features.

g. [3.1.15]. Have NE provided their Habitat Mitigation Area vegetation survey results to the Applicant? Which documents does the Applicant anticipate may need to be updated as a result and when would updated versions, as necessary, be provided to the Examination?

h. [3.1.16]. Can the IPs state whether they agree with the justification for a maximum vessel speed of six knots and with the assessment of the potential effects provided by the Applicant at D1.

## **5. Further questions arising from D1 and D2 submissions**

a. Please can NE & the Applicant expand on their positions in respect of disturbance to birds at high tide.

b. Please can the Applicant indicate when the errata document in respect of habitat loss will be provided to the Examination.

c. In respect of any potential mitigation requirements for effects on terrestrial and aquatic invertebrates, when does the Applicant intend to provide such information to the Examination?

d. Please can the Applicant and NE provide an update on discussions about the diversion of the English Coast Path and the potential need for information to be provided to inform an appropriate assessment.

e. Please can the Applicant update ES Chapter 17 to include an assessment of effects of the Proposed Development on breeding redshank, identified as a feature of The Wash Site of Special Scientific Interest (SSSI).

f. Estuarine processes - Please can the EA confirm whether they remain of the view that an Expert Geomorphological Assessment is

required, and if so, provide to the Examination details of the data that they consider to be missing.

g. It is understood that the findings of the Navigation Risk Assessment (NRA) (and ES Ch 18) will inform the Navigational Management Plan (NMP), and that the NRA will be provided to the Examination at D2. There is no reference to the NRA in Schedule 9 or elsewhere in the dDCO. Please can the Applicant consider whether Schedule 9 should be amended to require that the NMP will be based on the NRA and ES Ch 18.

h. It is noted that a significant effect is predicted on the fishing fleet. Please can the Applicant provide an update on discussions with the fishing fleet, and indicate when preparation of the outline NMP will begin and whether, and when if so, an outline version can be provided to the Examination.

**6. Any other environmental matters**

**7. Any other business relevant to the Agenda**

Note: In circumstances where the ExA has been made aware of any technical difficulties around participation, he will provide an opportunity for persons who could not be heard on earlier agenda items to participate as necessary and appropriate.

**8. Actions arising (including any procedural decisions if required) and next steps**

**9. Closing**

## **Annex A**

### **Conduct and Management of Hearings**

Guidance under the Planning Act 2008 and the Examination Procedure Rules provides that at Hearings it is the ExA that will probe, test and assess the evidence through direct questioning of persons making oral representations. Questioning at the Hearing will therefore be led by the ExA. Parties wishing to make a representation will be invited to do so at the ExA's discretion.

The ExA will start the Hearing by making introductory comments, introductions and running through housekeeping matters and how the Hearing will be conducted. The ExA's expectation is that the Hearing will typically last for one to two hours. However, the actual duration will depend on the progress made on the day and will be subject to the ExA's powers of control over the conduct of the Hearing.

Questioning at the Hearing will be led by the ExA. Cross-questioning of the person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that a person has had a fair chance to put their case.

The Agenda may be amended by the ExA at the start of the hearing session. Furthermore, the ExA may wish to raise matters arising from oral submissions, Relevant Representations and Written Representations, and pursue lines of inquiry in the course of the discussion which are not listed on the Agenda.

The Hearing is being held at the discretion of the ExA to consider matters that it considers to be important and relevant to the effective and robust examination of the application. Consequently, the business of a Hearing will be limited to the matters identified in the agenda or otherwise raised by the ExA..

Oral participation is at the invitation and discretion of the ExA. Oral submissions must address the matters, issues and questions identified in the hearing agenda and raised by the ExA at the hearing. Oral submissions on other subject matters or from persons who have not been invited to speak by the ExA may only be heard at the discretion of the ExA, who may decide that such matters are not heard in the interests of relevance or time efficiency.

If for any reason, including technical issues, matters are not concluded by the end this hearing, there are dates reserved for additional hearings during the week of the 28 February 2022. This will only be needed if the ExA decides that it is necessary to hear further oral submissions from any party on any relevant matters. This will be at the discretion of the ExA and it may be decided to pursue further representations in writing rather than through an additional hearing on this matter.

## **Annex A**

Recordings of the hearing will be published by the Planning Inspectorate and any IP may make a written submission on the specific matters either included in the agenda or arising at the hearing by Deadline 3 on 6 December 2021.